

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

KELLY A. AYOTTE
ATTORNEY GENERAL



MICHAEL A. DELANEY
DEPUTY ATTORNEY GENERAL

September 12, 2005

Section 5 Submission

Chief, Voting Section
Civil Rights Division
Room 7254 – NWB
Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20006

Re: Submission Under Section 5 of the Voting Rights Act for:

New Hampshire Revised Statute Annotated ("RSA") 654:31, a STATUTE related to the availability of the checklist, most recently amended by Laws of 1987 Chapter 337 and previously amended by the chapters cited below.

Dear Voting Section Chief:

Pursuant to 42 U.S.C. § 1973 (c), the State of New Hampshire, through the Office of the New Hampshire Attorney General, hereby submits RSA 654:31, a STATUTE related to the availability of the checklist, most recently amended by Laws of 1987 Chapter 337 and previously amended by the chapters cited below.

SUBMISSION:

In accordance with 28 C.F.R. § 51.27, the submission is as follows:

- a) Chapter 337 (1987) amending RSA 654:31 is attached (Exhibit 654:31 A).
 - 1. Chapter 147 (1981) amending RSA 654:31 is attached (Exhibit 654:31 B)
- b) The starting point for analysis, previously precleared, Chapter 436 (1979) recodifying RSA 55:20-a and RSA 55:23 as RSA 654:31 is attached (Exhibit 654:31 C).

- c) The changes made by amendments to RSA 654:31 are as follows:
1. Chapter 337 (1987) makes the following changes:
 - a. Replace the second sentence of this statute with “*The supervisors shall furnish one or more copies of the most recent checklist to any person requesting such copies.*”
 - b. Insert the phrase “*...that is based on the actual costs incurred when reproducing an existing checklist, except that in no event shall the fee for paper copies of any single town or ward checklist be less than \$5 nor more than \$25 per checklist. The fee charged for checklists on computer disk or tape, or in any other form than paper, shall be based solely on the additional costs incurred to provide such checklist to the individual requesting it.*” In the last sentence of this statute following the words “*...for copies...*”
 - c. Make the last clause of the last sentence a sentence standing alone.
 2. Chapter 147 (1981) makes the following changes:
 - a. Replace the phrase “*...the same a checklist which was used in said election without the voting marks thereon and with or without party designations at the discretion of said supervisors*” with the phrase “*...such copies. If the supervisors maintain or have access to the checklist or information from which the checklist was derived in more than one form, the person requesting such copies shall be furnished copies in any of those forms according to his preference.*”
 - b. Makes minor grammatical changes to the final sentence of this statute
 - d) This submission is made by: Senior Assistant Attorney General
Orville B. Fitch II, 33 Capitol Street, Concord, New Hampshire 03301,
Phone: (603) 271-1238.
 - e) The submitting authority is New Hampshire Attorney General, Kelly A. Ayotte for the State of New Hampshire.
 - f) Not applicable.

- g) The changes for which pre-clearance is sought were made by a decision of the New Hampshire General Court (Legislature).
- h) In accordance with Amendment X of the U.S. Constitution, the New Hampshire General Court, the State's legislature, acting pursuant to the New Hampshire Constitution Part Second, Article 2, granting supreme legislative power within the state to the House and Senate, who with right to negate each other are granted power to make law through Part Second, Article 5. Additional authority regarding election law is vested in Part First, Article 11.

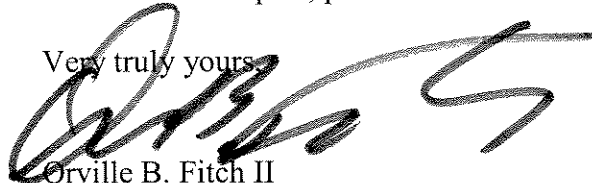
The legislature through a bicameral process passed law to create Chapter 337 (Exhibit 654:31 A). The bill was signed into law (by the Governor) on May 25, 1987, pursuant to New Hampshire Constitution Part Second, Article 44.

- i) Adoption dates:
 - 1. Chapter 337 (1987) adopted May 25, 1987
 - 2. Chapter 147 (1981) adopted May 22, 1981
- j) Effective dates:
 - 1. Chapter 337 (1987) effective July 24, 1987
 - 2. Chapter 147 (1981) effective July 21, 1981
- k) The changes have been enforced.
- l) The changes affect the entire State of New Hampshire.
- m) The purpose for the changes are as follows:
 - 1. The purpose of the Chapter 337 (1987) change is to specify the fees that may be charged for copies of the checklist
 - 2. The purpose of the Chapter 147 (1981) change is to make available to any person requesting copies of the checklist, copies of the checklist in any form in which it, or information used to derive it, is stored. Generally, this required towns to provide the checklist in electronic form, when stored in that form.

- n) These changes do not negatively target any protected class under section 5 of the Voting Rights Act of 1965. *42 U.S.C. 1973c*. They are expected to have neutral impact and do not meet the test of retrogression defined in *Reno v. Bossier Parish Sch. Bd*, 520 U.S. 471, 478 (1997). “(T)he ability of minority groups...to elect their choices to office” will not be diminished. *Beer v. U.S.*, 425 U.S. 130,141 (1976).
- o) None known.
- p) RSA 654:31 was precleared through 1979 on June 22, 2004 by D.O.J. file numbers 2004-2563, 2004-2581 and 2004-2582. A copy of this preclearance is attached as Exhibit 654:31 D. This submission seeks preclearance of all subsequent changes.
- q) Not applicable as this is not a redistricting plan.
- r) Exhibit 654:31 E is a copy of a Press Release of this submission, its availability, and inviting comment to federal Department of Justice.

I expect the foregoing information is sufficient to enable the United States Attorney General to make the required determination pursuant to Section 5 of the Voting Rights Act. If further information is required or would be helpful, please contact me.

Very truly yours,



Orville B. Fitch II
Senior Assistant Attorney General
Civil Bureau
(603) 271-1238
bud.fitch@doj.nh.gov

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than \$5 nor more than the cost of a computer disk or tape, plus any additional costs incurred by the agency. The fee shall be for

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654:25 Preparing guidelines for the c data related to che and correct the che be maintained and standard forms and of such information the full name, addi and such other inf the information so elections. Every c the full name, mai checklist.

337:3 Effective 1

[Approved May 25
[Effective Date Ju

336:1 Retirement Benefits for Certain Group II Members. Amend RSA 100-A:5, II(a) to read as follows:

(a) Any group II member in service who has attained age 45 and completed 20 years of creditable service, or who has attained age 65 regardless of the number of years of his creditable service, may retire on a service retirement allowance upon written application to the board of trustees setting forth at what time not less than 30 days nor more than 90 days subsequent to the filing thereof, he desires to be retired, notwithstanding that during such period of notification he may have separated from service.

336:2 Effective Date. This act shall take effect July 1, 1987.

[Approved May 25, 1987.]

[Effective Date July 1, 1987.]

Be it Enacted by
convened:

AN ACT RELATIVE TO THE FEE CHARGED
FOR COPIES OF THE CHECKLIST.

Be it Enacted by the Senate and House of Representatives in General Court convened:

337:1 Availability of Checklist; Copies. Amend RSA 654:31 to read as follows:

654:31 Availability of Checklist. The checklist as corrected by the supervisors shall be open for the examination of any person at all times before the opening of a meeting or election at which the list is to be used. The supervisors shall furnish one or more copies of the most recent checklist to any person requesting such copies. If the supervisors maintain or have access to the checklist or information from which the checklist was derived in more than one form, the person requesting copies shall be furnished copies in any of those forms according to his preference. The supervisors may charge a reasonable fee for copies that is based on the actual costs incurred when reproducing an existing checklist, except that in no event shall the fee for paper copies of any single town or ward checklist be less

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338:2 Effective

[Approved May
[Effective Date

1987]

than \$5 nor more than \$25 per checklist. The fee charged for checklists on computer disk or tape, or in any form other than paper, shall be based solely on the additional costs incurred to provide such checklist to the individual requesting it. The fee shall be for the use of the town or city.

337:2 Contents of Checklist. Amend RSA 654:25 to read as follows:

654:25 Preparing Checklist. The secretary of state shall issue and distribute guidelines for the composition and style of checklists and for the maintenance of data related to checklists by which the supervisors of the checklist shall compile and correct the checklist. Such guidelines shall specify the information which is to be maintained and updated by the supervisors. The secretary shall establish standard forms and procedures for the use of the supervisors for the maintenance of such information. The information to be maintained and updated shall include the full name, address and party affiliation, if any, of each voter on the checklist and such other information as the secretary requires. The supervisors shall use the information so maintained and updated to prepare the checklist for all state elections. Every checklist used at any state election shall contain as a minimum the full name, mailing address and party affiliation, if any, of each voter on the checklist.

337:3 Effective Date. This act shall take effect 60 days after its passage.

[Approved May 25, 1987.]

[Effective Date July 24, 1987.]

CHAPTER 338 (HB 706)

AN ACT INCREASING THE PER DIEM ALLOWANCE
FOR COUNTY DELEGATION MEETINGS.

Be it Enacted by the Senate and House of Representatives in General Court convened:

338:1 Compensation Increased. Amend RSA 24:9-ee to read as follows:

24:9-ee Compensation for County Conventions. Notwithstanding the provisions of RSA 24:9-e to the contrary, members of each county convention may receive from the county treasury a sum not to exceed \$25 per day for actual attendance at meetings of their respective conventions and an allowance for travel expenses to and from the place of meeting at a rate per mile not in excess of the rate allowed by the United States Internal Revenue Service to be set by a vote of the respective county convention. They are not entitled to receive any compensation or mileage for attending such meetings when such meetings are held at the state house in Concord on a legislative day.

338:2 Effective Date. This act shall take effect 60 days after its passage.

[Approved May 25, 1987.]

[Effective Date July 24, 1987.]

PERCIPAD-Bayonne, N. J.

EXHIBIT

654:31 B

CHAPTER 145

1981]

CHAPTER 145 (HB 105)

AN ACT CONCERNING THE CIRCLE ABOVE
THE PARTY DESIGNATION ON BALLOTS.

Be it Enacted by the Senate and House of Representatives in General Court convened:

145:1 Wording. Amend RSA 656:10 (supp) as inserted by 1979, 436:1 by striking out said section and inserting in place thereof the following:

656:10 Circle. Above the party designation shall be printed a circle not less than 3/4 of an inch in diameter and, below such circle, shall be the following words printed in plain letters: "To vote for all candidates of this party make a cross (X) within this circle".

145:2 Effective Date. This act shall take effect 60 days after its passage.
[Approved May 22, 1981.]
[Effective Date July 21, 1981.]

CHAPTER 146 (HB 100)

"An Act To Recodify The Motor Vehicle Laws" Will Be Found In
Volume II Of The 1981 Laws.

CHAPTER 147 (HB 96)

AN ACT RELATIVE TO THE FORM AND AVAILABILITY
OF COPIES OF CHECKLISTS.

Be it Enacted by the Senate and House of Representatives in General Court convened:

147:1 Availability of Computerized Recordings of Checklists. Amend RSA 654:31 (supp) as inserted by 1979, 436:1 by striking out said section and inserting in place thereof the following:

654:31 Availability of Checklist. The checklist as corrected by the supervisors shall be open for the examination of any person at all times before the opening of a meeting or election at which the list is to be used. After each state election, the supervisors shall furnish one or more copies of the checklist used in that election to any person requesting such copies. If the supervisors maintain or have access to the checklist or information from which the checklist was derived in more than one form, the person requesting copies shall be furnished copies in any of those forms according to his preference. The supervisors may charge a reasonable fee for copies, and the fee shall be for the use of the town or city.

147:2 Effective Date. This act shall take effect 60 days after its passage.
[Approved May 22, 1981.]
[Effective Date July 21, 1981.]

654:28 Procedure. The supervisors of the checklist shall hear all applications for a correction of the checklist and the evidence submitted thereon and shall correct it according to their best knowledge so that it contains only the names of those persons qualified to vote at said election. The names of all persons not qualified to vote at the time of any session, but who shall clearly be qualified to vote on election day, may be added to the checklist at that session. No additions or corrections shall be made after 6:00 p.m. Saturday 10 days prior to election day, except as provided in RSA 659:12. The additions and corrections resulting from such sessions shall be made to the previously posted checklist on or before midnight on the succeeding Wednesday either by additions or corrections to said checklist or by posting a new corrected checklist. Notice of such additions or corrections to the checklist shall also be given to the town or city clerk.

654:29 Certification of List.

I. The supervisors shall subscribe and make oath to the following certificate on the back of the checklist, as corrected by them: We, the supervisors of the checklist of the town (or ward) of _____ do solemnly swear that, according to our best knowledge, the within list contains _____ (number) names of those persons only who are, by actual domicile, legal voters in said town (or ward).

II. They shall file a true copy of the corrected list, attested by them, with the town clerk. The checklists so corrected shall be used at the election. Any person who swears falsely in making such certificate shall be guilty of perjury.

654:30 Correcting Data Files. After each state election, the supervisors shall use the checklist from such election to correct the standard data files to conform to any changes which are evident from the checklist. The standard data file so maintained and corrected shall be a public record open to inspection at reasonable times and as otherwise required by law.

654:31 Availability of Checklist. The checklist as corrected by the supervisors shall be open for the examination of any person at all times before the opening of a meeting or election at which the list is to be used. After each state election, the supervisors shall furnish to any person requesting the same a copy of the checklist which was used in said election without the voting marks thereon and with or without party designations at the discretion of said supervisors. The supervisors may charge a reasonable fee for these copies for the use of the town or city.

Checklists: Additional Provisions for Primary Elections

654:32 Hearings on Alterations to Party Registration. Before each state or presidential primary election, the supervisors of the checklist shall be in session for the change of party registration of legal voters. The sessions shall be on 2 days, at least, and at such other times as they deem necessary, and shall not be closer in time to the primary than the day immediately prior to the first day for the filing of a declaration of candidacy.

654:33 Posting Copies; Notice of Sessions. The supervisors shall post copies of the checklist, showing the persons in the town or ward entitled to vote, with their party registration, so far as such registration has been made, in 2 or more public places in such town or ward at least 10 days prior to such session; and notice of the date, hour and place of the sessions to revise such registration shall be given upon such checklists.

654:34 Change of Registration.

I. Change of registration of a voter whose party membership has been previously registered.

(a) Any legal voter whose party membership has been registered may change such registration by appearing in person before the supervisors of the checklist for his town or ward at any session provided for in RSA 654:32 and stating to them under oath or affirmation, that:

(1) He intends to affiliate with and generally supports the candidates of the party with which he offers to register, in which case he shall be registered as a member of such party; or

(2) He does not wish to be registered as a member of any party, in which case his party designation shall be removed from the checklist.

(b) He may also change such registration at any primary, upon making oath or affirmation to the same effect, but he shall not be permitted in such case to vote the ballot of any party at such primary.

II. Change of registration of a voter whose party membership has not been previously registered.

(a) Any legal voter who has not been registered as a member of any party may register as a member of the party of his choice by appearing before the supervisors of the checklist for his town or ward at any session provided for in RSA 654:27 and stating to them, under oath or affirmation, if required, that he intends to affiliate with and generally supports the candidates of the party with which he offers to register, in which case he shall be registered as a member of such party.

(b) He may also register as a member of a party at any primary by requesting and voting the ballot of the party of his choice and if challenged, he shall take an oath or affirmation to the effect that he intends to affiliate with and generally supports the candidates of that party.

III. Notwithstanding any provision of paragraphs I and II to the contrary, no person who has voted in a primary may thereafter on the day of said primary change his party registration or change his registration so that he is registered as a member of no party.

654:35 Corrected List. After a pre-primary session, the supervisors shall prepare a corrected checklist showing the registration of party members as corrected by them; and such checklist with the corrections that shall have been made in the sessions provided for in RSA 654:27 through 654:32 shall be used at the primary.

Periodic Maintenance and Verification of Checklists

654:36 Reports of Transfer. If the supervisors of the checklist have received a notice of transfer from another board of supervisors of the checklist in the state of New Hampshire that a voter whose name is on the checklist has been added to the checklist of some other town or city, they shall strike that name from the checklist at the next session for the correction of the checklist. They shall retain the notice as proof of their reasoning in striking the name from the checklist.

654:37 Reports of Death. Whenever there is filed in his office notice of the death of any person or persons of the age of 18 years or over, the town or city clerk shall notify the supervisors of the checklist of such death by submitting a notice of same to the supervisors at their next regular session. Upon receipt of such notice, the supervisors shall examine the certificate of death, and if the name of said deceased person appears thereon, it shall be removed from the checklist at the next election. Any supervisor who shall neglect or refuse to remove the name of such deceased voter from the checklist after receiving notice of such death shall be guilty of a violation.

PENGAD-Rayonne, M. J.

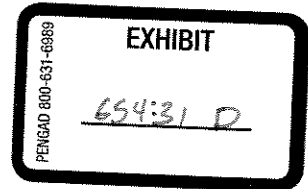
EXHIBIT

654:31 C



U.S. Department of Justice

Civil Rights Division



JDR:RPL:SMC:jdh
DJ 166-012-3
2004-2563
2004-2581
2004-2582

*Voting Section - NWB
950 Pennsylvania Avenue, N.W.
Washington, DC 20530*

June 22, 2004

Orville B. Fitch II, Esq.
Assistant Attorney General
Civil Bureau
Department of Justice
33 Capitol Street
Concord, New Hampshire 03301-6397

Dear Mr. Fitch:

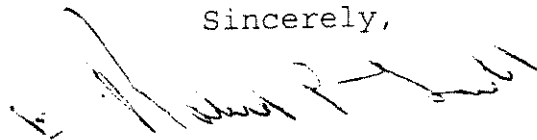
This refers to Session Law Chapter 436 (HB 575) (1979), which recodifies the election laws of the State of New Hampshire; Session Law Chapter 266 (HB 577) (2003), which implements the Help America Vote Act of 2002 (HAVA), 42 U.S.C. 15301-15545; and the adoption of formal administrative procedures for the resolution of election law complaints, including complaints filed under Title III of HAVA, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submissions on June 7, 2004.

The Attorney General does not interpose any objection to the specified changes. Regarding Session Law Chapter 266, we note that the act specifically amends the following provisions of the State's election laws: RSA 655:19, II (Chapter 387 (1991)) (to provide for the deposit of certain candidate filing fees collected by the secretary of state into the election fund); RSA 655:19-c (Chapter 387 (1991)) (to provide for the deposit of any administrative assessments paid to the secretary of state into the election fund); RSA 664:3, I (Chapter 351 (1997)) (to provide for the deposit of political committee registration fees paid to the secretary of state into the election fund); RSA 664:21, II (Chapter 351 (1997)) (to provide for the deposit of any administrative fines for violations of the State's campaign finance laws into the election fund); and RSA 665:7 (Chapter 436 (1979)) (to authorize the Ballot Law Commission to hear and resolve complaints alleging violations of Title III of HAVA, as specified).

We note also that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. 51.41 and 51.43).

Session Law Chapter 266 includes provisions that are enabling in nature. Therefore, the State is not relieved of its responsibility to seek Section 5 preclearance of any changes affecting voting proposed to be implemented pursuant to this legislation (e.g., creation of a centralized statewide voter registration database by the secretary of state and guidelines issued by the secretary of state implementing the database). See 28 C.F.R. 51.15.

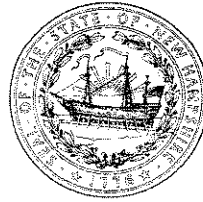
Sincerely,

A handwritten signature in dark ink, appearing to read "Joseph D. Rich", is written over a horizontal line.

Joseph D. Rich
Chief, Voting Section

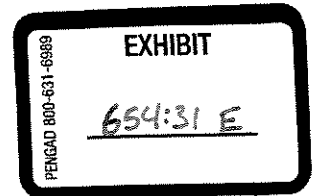
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KELLY A. AYOTTE
ATTORNEY GENERAL

MICHAEL A. DELANEY
DEPUTY ATTORNEY GENERAL



News Release

RELEASED BY: Attorney General Kelly A. Ayotte

SUBJECT: Voting Rights Act – Submission of a request for preclearance of changes to New Hampshire Voting laws and procedures

DATE: June 10, 2005

RELEASE TIME: Immediate

Attorney General Kelly A. Ayotte announces the submission of requests for preclearance of changes made to the election laws in New Hampshire to the Federal Department of Justice. Preclearance submissions will address changes made to New Hampshire's election laws since jurisdictions in the State became subject to preclearance.

Ten New Hampshire towns are subject to section 5 of the federal Voting Rights Act. Changes to New Hampshire election laws that affect any of these ten towns must be submitted for review by either the Federal Department of Justice or the Federal District Court for Washington D.C. The federal Department of Justice will review the changes to New Hampshire's election laws to ensure that the changes do not have the effect of denying or abridging the right to vote on account of race or color, or membership in a language minority group. Changes to New Hampshire redistricting statutes have been submitted to, and approved by, the U.S. Justice Department since the 1980 census. Federal regulations require that the public be notified that the State has filed a request for preclearance and that the submission be available for public inspection.

Copies of each submission by the Attorney General for the State of New Hampshire are available at the office of the Attorney General at 33 Capitol Street, Concord New Hampshire, 03301. Each document will also be made available at the Attorney General's Office web site at:

<http://www.doj.nh.gov/elections/>

Attorney General Ayotte and the federal Department of Justice invite persons interested in this submission to submit comments and information, in writing or by telephone, to the Voting Section of the Federal Department of Justice, Civil Rights Division, at the earliest possible date to ensure that they may be considered during the preclearance review time period. Telephone 1-800-253-3931 or (202) 307-2385 or write Chief, Voting Section, Civil Rights Division, Room 7354 – NWB, Department of Justice, 950 Pennsylvania Ave., NW, Washington, DC 20530. The envelope and first page should be marked "Comment under section 5." Additional information on the Voting Rights Act and the preclearance process can be obtained at the web site of the Federal Department of Justice at:

<http://www.usdoj.gov/crt/voting/index.htm>

The New Hampshire Attorney General's Office Voting section can be contacted at:

<http://www.doj.nh.gov/elections/>
New Hampshire Toll Free 1-866-8868-3703
or 1-866-VOTER03
electionlaw@doj.nh.gov